Filed 2/25/09 In re V.D. CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re V.D., a Person Coming Under the Juvenile Court Law.	B207593 (Los Angeles County Super. Ct. No. JJ15785)
THE PEOPLE, Plaintiff and Respondent, v. V.D., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Robert Ambrose, Referee.

Leslie G. McMurray, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, James William Bilderback II and Tita Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant V.D. appeals from an order of wardship pursuant to Welfare and Institutions Code section 602 following the finding he committed grand theft of personal property as alleged in a petition filed February 14, 2008. (Pen. Code, § 487, subd. (a).) The offense was declared to be a misdemeanor. Appellant, who was 12 years old at the time of the offense, was placed home on probation and contends there was insufficient evidence to rebut the presumption he was incapable of committing theft. He additionally claims there was insufficient evidence to support the finding he committed theft. For reasons stated in the opinion, we affirm the order of wardship.

FACTUAL AND PROCEDURAL SUMMARY

On December 16, 2007, at approximately 4:30 p.m., Antony Mercurson was working in the area of 61st Street and Broadway in the County of Los Angeles and saw appellant standing in the middle of the street, glancing back and forth, up and down the street as though he was looking for someone. Two other young men were nearby, and one of them rolled out a mini-bike from a nearby garage and "whisked" it into appellant's yard. Appellant helped move the bike along. Several other individuals joined the first two, and they took a second bike out of the garage and "whisked it up the street." As they passed, appellant "high-fived" the person who went by with the mini-bike.

The owner of the mini-bikes testified he had not given anyone permission to remove them from his garage. He had not given appellant, who was his neighbor, permission to go into the garage and take the bikes.

Appellant's mother testified she had always talked to appellant about right and wrong and that it was wrong to steal. She always told him he "shouldn't even take a needle. If [he] find[s] a penny, [he] should turn it in."

Appellant testified he had been in his house on the evening of December 16, 2007, and left at approximately 5:00 or 5:30 p.m. to go to the store. When his neighbors accused him of taking the mini-bikes, he did not know what they were talking about. After he was arrested, a police officer talked to him about "what is right and wrong." Appellant stated "fighting" was an example of something that was wrong.

DISCUSSION

I

Appellant contends there was insufficient evidence to rebut the presumption that he was incapable of committing theft. We disagree. Penal Code section 26 provides in pertinent part: "All persons are capable of committing crimes except those belonging to the following classes: [¶] One—Children under the age of 14, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness." In order to rebut the presumption that a child under the age of 14 is incapable of committing a crime, the prosecution must present clear and convincing evidence the minor knew the wrongfulness of his conduct. (*In re Manuel L.* (1994) 7 Cal.4th 229, 234.)

When a minor contends there is insufficient evidence to support the determination he understood the wrongfulness of his conduct, "[w]e review the whole record most favorably to the judgment to determine whether there is substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof. [Citations.] The trier of fact, not the appellate court, must be convinced of the [finding], and if the circumstances and reasonable inferences justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment. [Citation.]" (*In re Jerry M.* (1997) 59 Cal.App.4th 289, 298.) "In determining whether the minor knows of the wrongfulness of his conduct, the court must often rely on circumstantial evidence [citation] including the minor's age, experience and understanding, as well as the circumstances of the offense including its method of commission and concealment. [Citation.]" (*Ibid.*)

"[A] minor's 'age is a basic and important consideration [citation], and, as recognized by the common law, it is only reasonable to expect that generally the older a child gets and the closer [he] approaches the age of 14, the more likely it is that [he] appreciates the wrongfulness of [his] acts.' [Citation.]" (*People v. Lewis* (2001)

26 Cal.4th 334, 378.) The testimony of a minor's parent regarding instructions to the minor is relevant in establishing whether the minor appreciated the wrongfulness of his actions. (*In re Paul C.* (1990) 221 Cal.App.3d 43, 53.) Further, the conduct and statements of a minor during the commission of the crime or after its commission may evidence an awareness of the wrongfulness of the conduct. (*In re Cindy E.* (1978) 83 Cal.App.3d 393, 400.)

Here, substantial evidence supports the finding that appellant understood the wrongfulness of his conduct. Appellant was 12 years old when he committed the offense. His mother testified that she talked to him about right and wrong and that she taught him not to steal. Additionally, the police questioned appellant about right and wrong. When they asked him for an example of something that would be wrong, he gave the example of "fighting," indicating appellant was capable of understanding the difference between right and wrong.

II

Appellant contends there was insufficient evidence to support a finding he committed the theft. He argues the only witness who placed appellant at the scene was "an untrustworthy witness whose testimony was incomplete, inconclusive, contradictory, and bizarrely punctuated with hostile, graphic, and profane outbursts at counsel and at the judge.[1]

"'The standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials. [Citation.]' [Citation.] In considering the sufficiency of the evidence in a juvenile proceeding, the appellate court 'must review the whole record in the light most favorable to the judgment below to determine whether it

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[1] During Mr. Mercurson's testimony and in response to the court's question, "Where did that mini bike go?" Mercurson responded, "What a bunch of fuckin'–the bike was whisked up the street." When the court advised the witness, "That's enough," Mr. Mercurson responded, "Kiss my ass." After both counsel indicated they had no further questions for Mr. Mercurson, he responded, "Thanks. Suck my dick." Mr. Mercurson admitted he had prior felony convictions for robbery and assault with a deadly weapon.

discloses substantial evidence—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. We must presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence [citation] and we must make all reasonable inferences that support the finding of the juvenile court. [Citation.]' [Citations.]" (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088-1089.) "This standard applies to cases based on circumstantial evidence. [Citation.]" (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830.)

"'Although it is the duty of the [finder of fact] to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the [finder of fact], not the appellate court[,] which must be convinced of the defendant's guilt beyond a reasonable doubt. "'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.'" [Citations.] "Circumstantial evidence may be sufficient to connect a defendant with the crime and to prove his guilt beyond a reasonable doubt." [Citation.]' [Citations.]" (*People v. Figueroa* (1992) 2 Cal.App.4th 1584, 1587.)

"[T]he direct testimony of a single witness is sufficient to support a finding unless the testimony is physically impossible or its falsity is apparent 'without resorting to inferences or deductions.' [Citations.] Except in these rare instances of demonstrable falsity, doubts about the credibility of the in-court witness should be left for the jury's resolution . . . ." (*People v. Cudjo* (1993) 6 Cal.4th 585, 608-609.)

The trial court agreed Mr. Mercurson's testimony was "colorful" but found him to be a credible witness. The trial court observed, "Does [Mr. Mercurson] have any reason to take it out on your client? I mean, he may be a lot of things, I know that, but . . . that doesn't mean that he can't see what he sees and say what he saw." The trial court concluded that despite defense counsel's "excellent argument and Mr. Mercurson's 'colorful' testimony, I think he saw something was going on. Your client was involved."

The trial court determined that Mr. Mercurson was a credible witness and substantial evidence supports the court's conclusion that appellant committed the theft.

DISPOSITION

The order of wardship is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.